

November 9, 1978

Dear Mr. _____:

This is in response to your November 6, 1978, letter to Mr. Glenn Rigby concerning Government Code Sections 51100-51155, Timberland.

Initially, you ask for the definition of "timber" and "timberland" as used in Section 51100.

Section 51100 provides that unless otherwise apparent from the context:

"(e) 'Timber' means trees of any species maintained for eventual harvest for forest product purposes, whether planted or of natural growth, standing or down, on privately or publicly owned land, including Christmas trees, but does not mean nursery stock."

"(f) 'Timberland' means privately owned land, or land acquired for state forest purposes, which is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses, and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre."

You then ask whether "timber" must be something that would be used as a forest product, for example, lumber, or something other, for example, firewood.

As indicated, "timber" means trees of any species maintained for eventual harvest for forest product purposes. Such purposes are not defined or enumerated, but we are of the opinion that trees maintained for eventual harvest for firewood are "timber".

You then ask, with respect to "timberland," who determines whether land is devoted to and used for growing and harvesting timber.

The purpose of sections 51110-51119.5 is to establish timberland preserve zones to be valued for property taxation, in general, on the basis of use for growing and harvesting timber only. The statutory scheme for zoning property as timberland preserve is quite extensive: The assessor is to have determined parcels which as of the lien date in 1976 were assessed for growing and harvesting timber as the highest and best use of the land (List "A"), and the assessor is to have determined parcels which as of the lien date in 1976 appeared in his judgment to have constituted timberland but which were not assessed for growing and harvesting timber as the highest and best use of the land (List "B"); the county planning commission is to have held public hearings on parcels referred to it by the board of supervisors and is to have made recommendations to the board; and the board of supervisors also is to have held public hearings on the parcels and considered the recommendations of the planning commission prior to having zoned parcels as timberland preserve. Additionally, landowners whose properties were not included on either List "A" or List "B" could petition directly to the board of supervisors to have their properties included on List "B"; and after November 1, 1977, an owner may petition the board of supervisors to zone his land as timberland preserve.

Despite the desirability of having land used for growing and harvesting timber zoned as timberland preserve, the Legislature was cognizant of the long-standing right of owners of properties to do with their properties what they wish, so long as in doing so neither law nor public policy is violated. Hence, provision was made for owners to demonstrate that it would not be in the public interest for their parcels to be zoned as timberland preserve:

List "A": All noncontested parcels were to be zoned as timberland preserve unless the owner could demonstrate either:

- (i) That the parcel or parcels are not capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre; or
- (ii) That the current use of the parcel has changed subsequent to March 1, 1976, and that such use is no longer the growing and harvesting of timber, and is not compatible with the growing and harvesting of timber.

As to other list "A" parcels, an owner believing that a parcel had a highest and best use other than growing and harvesting timber could submit an affidavit describing the intended use he had for the parcel, but such "contested" parcels were to be zoned as timberland preserve unless the owner could demonstrate that it would not be in the public interest for the parcel to be so zoned, in which case the parcel would be valued in the future on a higher and better use of the land.

List "B": All parcels included in List "B" were to be zoned as timberland preserve unless an owner could demonstrate that it would not be in the public interest for his parcel to be so zoned.

For the most part, list "A" and List "B" preparation and hearing were to have been concluded by March 1, 1978.

You then pose the situation of one not having the desire or expertise to manage his land as timberland preserve, in effect, asking how property zoned as timberland preserve can be rezoned.

An owner who feels that his parcel has been incorrectly zoned as timberland preserve may request that his parcel be immediately rezoned pursuant to Section 51131 or may request that his parcel be rezoned pursuant to Section 51120.

You then ask whether land devoted to an orchard would be considered "timberland" because timber would grow if planted on the land.

As indicated, "timberland" means land which is devoted to and used for growing and harvesting timber and which is capable of growing an average annual volume of wood fiber of at least 15 cubic feet per acre. In our view, land devoted to an orchard is not devoted to and used for growing and harvesting timber. Thus, we are of the opinion that land devoted to an orchard is not "timberland."

You then ask whether a grassy hillside would be considered "timberland" even if the brush would produce 15 cubic feet per acre of wood fiber.

"Timberland" also means land, which is devoted to and used, for growing and harvesting timber and compatible uses. Assuming a hillside only, not part of a parcel of timberland and not subject to the "compatible use" portion of the definition, in our view, the hillside is not devoted to and used for growing and harvesting timber. Thus, we are of the opinion that such a hillside is not "timberland."

Finally, you pose the following situation:

"Using \$200/1000 bd. ft. as a return to the owner after logging cost.
Deducting the 6.5% Harvest Tax and having a cost over the 20 years of
9% interest on the land cost, property tax, maintenance of the forest, etc.
the property shows a loss out-of-pocket."

and you ask whether this can be considered land that should be devoted to growing timber.

It is whether land is devoted to and used for growing and harvesting timber, not the profitability or unprofitability of a particular situation, which is determinative.

Very truly yours,

James K. McManigal, Jr.
Tax Counsel

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